APPENDIX.

OPINION.

The Opinion of the Supreme Court of Illinois (9 Ill. (2) 364, 137 N.E. 2d 835) is as follows:

MR. JUSTICE SCHAEFER delivered the opinion of the court:

This is an appeal from a decree of the circuit court of Lake County which declared invalid certain provisions of the zoning ordinance of the city of Highland Park, as they apply to plaintiffs' property. The trial court certified that the public interest required a direct appeal to this court. The challenged provisions are those which govern intensity of use, the height of buildings and off-street parking facilities.

Plaintiffs' property is located at the northeast corner of the central business district in Highland Park, at the intersection of Sheridan Road and Park Avenue. It is improved with a building which contains six retail stores on the main floor and seven apartments on each of the second and third floors. The fourth floor is an attic area under a high mansard roof, which plaintiffs desire to convert into seven additional apartments. When the building was built in 1929, the elevator shaft, electrical circuits and rough plumbing were run up to the fourth floor.

The American Legion Hall and the Highland Park Woman's Club are located in the block to the north on Sheridan Road. North of these buildings is a public school with a tower rising higher than plaintiffs' building. Immediately to the east of plaintiffs' property is a two-story building occupied by doctors' offices and apartments. Be-

yond this building is a residential area extending east about a mile to Lake Michigan. The central business district lies to the south and west of plaintiffs' property. Four blocks west and south is the city water tower, which rises to a height considerably greater than that of the plaintiffs' property.

Since 1926 the zoning ordinances of the city of Highland Park have continuously prohibited the erection or alteration of any building to exceed three stories or 45 feet in height. In 1928 the then owners of this property applied for a permit to erect a five-story store and hotel building. The denial of this application was affirmed by the Zoning Board of Appeals, which found that no practical difficulty or unnecessary hardship was involved. Thereafter, in 1929, the owners erected the present building, pursuant to a permit for the construction of a three-story store and apartment building. Plaintiffs are the trustee and the beneficiary of a trust which purchased the property in 1947.

In 1947, shortly before the plaintiffs purchased the property, the city enacted a new zoning ordinance which retained the three-story limitation. A comprehensive zoning survey preceded enactment of this ordinance. At that time the then owners urged the council to remove the limitation. After three public hearings the council determined that it was not in the best interest of the city to do so. In 1948 the council reaffirmed its judgment in this matter after a series of public hearings before the zoning committee of the city council, upon the written request of the plaintiff Reingold for a special permit to extend the use of the building in question. The committee report filed at that time recommended disallowance on the grounds that the sewers serving the building were inadequate for present use, and that the parking situation was acute in the area.

In addition to violating the three-story limitation, use of the fourth floor for apartments would violate the intensity of use provision of the ordinance. The premises in question have a lot area of approximately 13,310 square feet, which is equal to 950 square feet per family for 14 families, or 634 square feet for 21 families. The zoning ordinance of 1926 required 950 square feet of lot area per family, and the ordinance of 1947 requires 1500 square feet of lot area per family. For a new building, the present ordinance would permit occupancy by nine families. Plaintiffs seek permission for occupancy by 21 families.

The ordinance also requires the maintenance of parking space to accommodate one car for each unit in a multiple dwelling on the lot or within 200 feet therefrom. Although there is some dispute on the point, it appears that the nearest off-street parking area available to tenants of the building is a public parking lot more than 500 feet distant from the premises.

The trial court entered a decree holding the ordinance invalid as to plaintiff's property and ordering issuance of a building permit. Plaintiffs admit that the proposed alterations do not comply with the height and intensity of use limitations, but contend that there is adequate parking space within 200 feet. This contention is not supported by the evidence. The private parking lots of a nearby mortuary and theater are not available to the public. The municipal parking lot across the street from the theater does not permit overnight parking, as plaintiffs' tenants would require. The only other off-street facility in the area is the municipal parking lot more than 500 feet from the premises.

In a memorandum opinion the trial court stated that it could "see no applicability of any rule requiring a minimum amount of lot space for persons occupying the build-

ing * * * since the structure is located in the central business district and rules which might apply to residential structures would obviously not apply." This conclusion was erroneous. The statute which authorizes enactment of regulations governing intensity of land use is not limited to residential areas. (Ill. Rev. Stat. 1955, chap. 24, par. 73—1.) The ordinance expressly states that the minimum lot area requirements are to be the same in the central business district as in wholly residential areas. One of the purposes of such a regulation is to protect the public facilities from excessive use. In view of the heavy demands put on such public facilities as water mains, sewers and streets, by commercial users, restrictions upon intensity of use are no less necessary in central business areas than in wholly residential areas.

In its opinion the trial court held the three-story limitation arbitrary, unreasonable and confiscatory as to plaintiffs' property. Allowing the proposed alteration, the court said, would greatly enhance the value of plaintiffs' property without impairing the public health, comfort, safety and general welfare. In so holding the court stressed the fact that the overall height of the building would not be increased, and its exterior would not be altered. This holding, however, ignored the function of the three-story limitation as a regulation of the intensity of use of the premises. It is true that one of the purposes of height limitations is to assure adequate light and air to adjacent properties, but that is not their only function. The broader purpose of the city council in enacting this ordinance is clear from the fact that the limitation is expressed in number of stories as well as in number of feet.

"Where the proper authorities have adopted a zoning ordinance pursuant to a legislative grant, a presumption favoring its validity always obtains [citations]. One as-

sailing the validity of such an ordinance as arbitrary and unreasonable * * * must prove by clear and affirmative evidence that the ordinance constitutes arbitrary, capricious and unreasonable municipal action, that there is no permissible interpretation which justified its adoption or that it will not promote the safety and general welfare of the public." *First National Bank of Lake Forest* v. *County of Lake,* 7 Ill. 2d 213, 225.

The plaintiffs attempted to overcome this presumption by the testimony of three witnesses: plaintiff Reingold, Evert Kincaid, a professional city planner, and Donald Anderson, a former manager of the property. Reingold testified that there was a serious shortage of rental housing units in Highland Park, particularly for many widows and elderly couples who would like to sell their large, old homes, if they could find other places to live; that these people ordinarily preferred accommodations as close to the shopping area as possible, and that allowing him to remodel the building as proposed would help meet the need he described.

Kincaid testified that the property was designed to be used in the proposed manner, and that it was practical to complete the building as proposed by plaintiffs; that the highest and best use of the property would be with completion of the fourth floor in connection with its present use; that the proposed alteration would have no adverse effect on the surrounding property, particularly since the exterior of the building would not be affected, and that the increased availability of rental housing ("We have young families who desire to rent a home or place to live and such facilities are not available") would help to meet a serious community need. He further stated that in his opinion "Highland Park had insufficient property zoned for multiple-family use in proper locations."

Anderson, the former manager of the building, testified that in his opinion the building was now worth about $275,000; that the proposed improvements could be made at a cost of about $40,000, and that they would increase the value of the building about $75,000 to $80,000; that while he was manager, the building was tenanted by 19 or 20 elderly persons, who caused no parking problems because most of them were too old to drive automobiles; that he assumed that the sewer facilities servicing the building were adequate, and that in his opinion the highest and best use of the property would be with completion of the fourth floor as proposed by plaintiffs.

In our opinion this evidence wholly fails to prove that application of the ordinance to plaintiffs' property is arbitrary or capricious. No evidence was offered to show a more intensive use of property anywhere in the city than now exists on plaintiffs' property. The present ordinance would permit use of the property for nine apartments. Plaintiffs now have 14 apartments on the property, and would have 21 apartments under the proposed alteration. Nor did plaintiffs' evidence indicate any building of more than three stories in the entire city. The only structures which rise to a greater height are the ornamental tower of the public school and the city water tower. That the ordinance permits churches to have 75 foot steeples, and certain public or quasi-public buildings, such as hotels, hospitals, churches and schools to be erected to a height of 60 feet, does not establish discrimination.

The plaintiffs seek a privilege accorded no other person under this ordinance. Indeed, if plaintiffs were allowed to create the additional apartments by finishing off the fourth floor of their building, it is difficult to see how the limitations of the ordinance could fairly be enforced against

any owner of property in the central business district. Plaintiffs, however, argue that a distinction exists between their property and other properties. The fourth story is already built, they say, and was designed to be finished off in the manner proposed.

We think that the attempted distinction is without substance. Plaintiffs' predecessors, in 1928, constructed the building pursuant to a permit to erect a three-story building, issued after a permit for a five-story hotel had been denied. Their action in erecting this building, and in taking substantial steps toward completing the fourth floor was gratuitous, and appears to have been taken in violation of the ordinance. The building is either a legally constructed three-story building with an attic, or it was illegally constructed. The unnecessary and possibly illegal action of plaintiffs' predecessors affords no basis for now according to plaintiffs the exclusive privilege of owning the only four-story building in the central business section of Highland Park. If any hardship is involved, it was self-induced.

Although plaintiffs' witness Kincaid testified that "Highland Park does not have sufficient area zoned for multiple-family use in proper locations," he did not identify any deficiencies in the present zoning plan. The defendant attempted to rebut this testimony by showing that there are 30 acres of land zoned for multiple-family use, which are not now so used. The trial court sustained plaintiffs' objections to admission of this rebuttal evidence on the ground that considerations relating to other properties were not relevant in this proceeding, which concerned the use of an existing building. This ruling was erroneous. The existing zoning was clearly relevant when an alleged shortage of property zoned for multiple-family housing was being urged as a basis for voiding an intensity of use limitation. *Weseman* v. *Village of La Grange Park,* 407 Ill. 81.

It was further urged that the merchants would benefit by the increased business patronage of the people in the fourth floor of the building. To the extent that such tenants had automobiles and parked them in the street during business hours, the interest of the merchants would suffer. In any case, the factor was one to be weighed by the city council, rather than by the court. *First National Bank of Lake Forest* v. *County of Lake*, 7 Ill. 2d 213.

The evidence shows that as early as 1925 the sewer servicing the plaintiffs' building was considered shallow and inadequate. There was testimony by the former city engineer that the mains servicing this property were installed in 1891 and are six inches in diameter; that State law now establishes eight inches as a minimum, and that in the residential area to the east of the building there has been trouble with flooded basements. He testified that the load on the sewers averages 150 gallons per person per day, and that in his opinion adding seven additional apartments would seriously burden the system. The only evidence offered by plaintiffs was the testimony of the former building manager, Anderson, that while he was manager of the building, between 1946 and 1951, he had experienced no difficulties. That evidence does not, of course, meet the issue.

There was also considerable evidence of a serious parking problem in the immediate area. That evidence need not be stated in detail. It is sufficient to point out that unless some arrangement was made with the mortuary or the theater the automobiles of the prospective tenants would remain on the streets at least a part of the time. To the extent that they did, they would aggravate the already acute shortage of parking spaces.

UNITED STATES OF AMERICA

State of Illinois } ss.
Supreme Court }

At the term of the Supreme Court, begun and held in Springfield, on Monday, the tenth day of September in the year of our Lord, one thousand nine hundred and fifty-six, with in and for the State of Illinois.

Be it remembered that afterwards, on the 25th day of September, 1956, the opinion and judgment of the Court was filed in said cause and entered of record:

City of Highland Park, a municipal corporation,
Appellant
Chicago City Bank & Trust Company, a corporation, etc., et al.,
Appellees
No. 33750 vs.

} Appeal from Circuit Court Lake County

This is an appeal from a decree of the circuit court of Lake County. The decree of the circuit court of Lake County is reversed, and the cause remanded to that court, with directions to dismiss the complaint.

The record as a whole shows a reasonable basis for the enactment of the ordinance and for the action of the city council in refusing to grant special permission to plaintiffs to complete the proposed alteration. The decree of the circuit court of Lake County is reversed, and the cause remanded to that court, with directions to dismiss the complaint.

Reversed and remanded, with directions.

The 5th Amendment to the Constitution of the United States provides as follows:

AMENDMENT (V)

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces or in the Militia, when in actual service in time of War or public danger, nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The 14th Amendment to the Constitution of the United States provides as follows:

AMENDMENT (XIV.)

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Amendment to Zoning Ordinance, City of Highland Park, Passed January 8, 1926.

"Be It Ordained by the Council of the City of Highland Park, Lake County, Illinois:

That an ordinance entitled "An Ordinance to regulate and limit the height and bulk of buildings; to regulate and limit the intensity of the use of lot areas, and to regulate and determine the areas of open spaces within and surrounding such buildings; to classify, regulate, and restrict the location of trades and industries and the location of buildings designed for specified industrial, business, residential, and other uses; to divide the entire City of Highland Park into districts for the purpose of this ordinance; to fix standards to which buildings or structures shall conform; to prohibit uses, buildings, or structures incompatible with the character of such districts respectively; and to prevent additions to and alterations or remodeling of existing buildings or structures in such a way as to avoid the restrictions and limitations lawfully imposed hereunder, and to provide penalties for violation hereof," as amended, be and the same is hereby amended to read as follows:

Section 3. District Regulations. In order to classify, regulate, and restrict the locations of trades and industries, and the location of buildings designed for specified uses; to regulate and limit the height and bulk of buildings hereafter erected or altered; to regulate and limit the intensity of the use of lot areas; and to regulate and determine the area of yards, courts, and other open spaces within and surrounding such buildings, the City of High-

land Park, Illinois, is hereby divided into "Use Districts" of which there shall be four (4), known as—

1. "A" Residence Districts.
2. "B" Residence Districts.
3. Local Business Districts.
4. Commercial Districts.

Section 4. "A" Residence District Regulations.

Height: No building shall hereafter be erected or altered to exceed thirty-five (35) feet in height, or two and one-half (2½) stories.

Section 5. "B" Residence District Regulations.

Note. The height regulations in the "B" district are identical with those quoted above for the "A" district.

Section 6. Local Business District Regulations.

Use: No building or premises shall be used, and no building shall be hereafter erected or altered, within any Local Business District, unless otherwise provided in this ordinance, except for the uses permitted in the Residence Districts and for the following uses: • • •

2. Apartment buildings in accordance with building ordinance.

• • •

Apartments: No building, except buildings the street floor of which is used or designed to be used exclusively for business purposes, shall hereafter be altered or erected within any local business district for use as an apartment building.

Height: No building shall hereafter be erected or altered to exceed forty-five (45) feet in height or three (3) stories.

• • •

Intensity of Use of Lot: No building with its accessory buildings, to be used for commercial purposes, shall occupy in excess of ninety per cent (90%) of the area of the lot; no building or part of building used for residential purposes shall be arranged, designed, intended, or used to accommodate more than forty-eight (48) families on any acre of ground, nor more than a proportional number of families on any fractional part of an acre of ground.

Section 7. Commercial District Regulations.

* * *

Height: No building shall hereafter be erected or altered to exceed forty-five (45) feet in height or three stories.

* * *

Intensity of Use of Lot: * * * Buildings or parts of buildings used wholly for residential purposes shall conform to the restrictions provided for such buildings in the Local Business Districts.

Section 9. Height and Area. Exceptions and Regulations.

The foregoing requirements in the height regulations shall be subject to the following exceptions and regulations:

1. Buildings owned by public or semi-public organizations, or public service buildings, hotels, churches, hospitals, sanitariums, or schools may be erected to a height not exceeding sixty (60) feet, provided that if such building is located in any residence district it shall be set back from each property line at least one (1) foot for each foot of additional building height above the limit for the district, in addition to the other requirements of this ordinance.

Amendment to Zoning Ordinance, City of Highland Park, Passed January 27, 1930.

ARTICLE VI. Section 3.

Height: No building shall hereafter be erected or altered to exceed forty-five (45) feet in height, nor in any case, irrespective of height to exceed three stories.

ARTICLE VI. Section 7.

Intensity of Use of Lot: No store-apartment building shall be arranged, designed, intended or used to accommodate more than one apartment, single living quarter and/or family to each nine hundred ten (910) square feet of the premises, lot, lots, fractional lot or parcel of ground devoted exclusively thereto.

Amendment to Zoning Ordinance, City of Highland Park, Passed October 9, 1939.

ARTICLE VI, Section 3.

Height: No building shall hereafter be erected or altered to exceed 45 feet in height, and no apartment house shall hereafter be erected to exceed 35 feet in height, and no building shall hereafter be erected or altered, irrespective of height, to exceed three stories above a basement.

The Highland Park Zoning Ordinance of 1947, Passed February 24, 1947.

WHEREAS:, the City Council of the City of Highland Park, Illinois, deems it necessary to the end that adequate light, pure air, and safety from fire and other dangers may be secured, that the taxable value of land and buildings throughout the city may be conserved, that congestion in the public streets may be lessened or avoided, and that the public health, safety, comfort, morals and welfare may otherwise be promoted in accordance with a

well-considered and comprehensive plan for the use and development of all property throughout the city,

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF HIGHLAND PARK, ILLINOIS:

ARTICLE 1

Section 1-1. That the ordinance entitled "An Ordinance to regulate and limit the height and bulk of buildings; to regulate and limit the intensity of the use of lot areas, and to regulate and determine the areas of open spaces within and surrounding such buildings; to classify, regulate, and restrict the location of trades and industries and the location of buildings designed for specified industrial, business, residential, and other uses: to divide the entire City of Highland Park into districts for the purpose of this ordinance; to fix standards to which buildings or structures shall conform; to prohibit uses, buildings, or structures incompatible with the character of such districts respectively; and to prevent additions to and alterations or remodeling of existing buildings or structures in such a way as to avoid the restrictions and limitations lawfully imposed hereunder, and to provide penalties for violation hereof," passed by the Council of the City of Highland Park, Illinois on the 27th Day of January, 1930, and approved by the Mayor of the City of Highland Park, Illinois on the 30th day of January, 1930, as amended, be and the same is hereby amended to read as follows:

ARTICLE 10

"F" MULTIPLE-FAMILY DWELLING DISTRICT REGULATIONS

Section 10-11. Parking Regulations: The parking regulations for two-family dwellings are the same as those in the "E" Two-Family Dwelling District. Where a lot is occupied by a multiple dwelling there shall be provided and maintained adequate parking space on the lot, or within

two hundred (200) feet thereof, available to and adequate to accommodate one (1) car for each dwelling unit in the multiple dwelling. Any other use that is constructed or reconstructed in conformity with the use regulations of the "F" Multiple Dwelling District shall provide and maintain adequate parking space either on the lot or within three hundred (300) feet thereof.

Section 10-17. Intensity of Use: Except as hereinafter provided, every dwelling hereafter erected, enlarged, relocated, or constructed shall be located upon lots containing the following areas and widths:

(b) A lot on which there is erected a multiple dwelling for five or more families shall contain an area of not less than fifteen hundred (1,500) square feet per family and an average width of not less than fifty (50) feet.

Article 12

"H" Central Business District Regulations

Section 12-15. Parking Regulations: The parking regulations for uses permitted in the "F" Multiple-Family Dwelling District shall apply to such uses when located in the "H" Central Business District. No parking space shall be required in the "H" Central Business Districts in any other instances.

Section 12-16. Height Regulations: No building shall exceed three (3) stories or shall it exceed forty-five (45) feet in height, except as otherwise provided in Articles 14 and 16 hereof.

Section 12-21. Intensity of Use: When a lot is improved with a single-family dwelling, two-family dwelling, or a multiple dwelling, or when living facilities are erected above other uses, the intensity of use regulations are the same as those required in the "F" Multiple Dwelling Districts.

ARTICLE 14

SECTION 14-5. A non-conforming use occupying only a portion of a building may be extended throughout the building if same has been lawfully acquired and actually devoted to such use previous to March 24, 1922, or previous to the date of any amendment subsequent to March 24, 1922 when prior to such amendment such use conformed to the provisions thereof.

SECTION 14-8. Special Permits: The Council of the City of Highland Park, may, by special permit, after public hearing held by the Zoning Committee and advertised as provided in Article 22, and subject to such protective restrictions that it deems necessary authorize the location, extension or structural alteration of any of the following buildings or uses, or an increase in their height, in any district from which they are prohibited or limited by this Ordinance; provided that such buildings or uses will not have any serious and depreciating effect upon the value of surrounding property.

SECTION 14-9. Any public building erected and used by any department of a Municipal, County, State or Federal Government.

SECTION 14-10. Hospitals, clinics and institutions, except institutions for criminals and those for persons who are mentally ill or have contagious diseases; provided, however that such buildings may occupy not over fifty (50) per cent of the total area of the lot or tract and, provided further, that the buildings shall be set back from all yard lines heretofore established an additional distance of not less than two (2) feet for each foot of building height, and that adequate off-street parking space will be provided.

• • •

SECTION 14-20. Radio towers and radio broadcasting stations.

SECTION 14-21. Hotels where the primary purpose is to provide seasonal or year around living facilities, but only when they are located upon large tracts and would not adversely affect surrounding residential development.

ARTICLE 16

EXCEPTIONS AND VARIATIONS OF THE HEIGHT AND AREA REGULATIONS.

SECTION 16-1. The district regulations hereinafter set forth in this article qualify or supplement, as the case may be, the district regulations appearing elsewhere in this Ordinance.

SECTION 16-2. Public, semi-public or public service buildings, hospitals, institutions or schools, when permitted in a district, may be erected to a height not exceeding sixty (60) feet, and churches and temples may be erected to a height not exceeding seventy-five (75) feet if the building is set back from each yard line at least one (1) foot for each foot of additional building height above the height limit otherwise provided in the district in which the building is located.

* * *

SECTION 16-4. Chimneys, cooling towers, elevator bulkheads, fire towers, monuments, stacks, stage towers or scenery lofts, tanks, water towers, ornamental towers and spires, church steeples, radio towers or necessary mechanical appurtenances, may be erected to a height in accordance with existing or hereafter adopted ordinances of the City of Highland Park, Illinois.